

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

MY TYPE, INC.

Employer

and

Case 33-RC-4879

TEAMSTERS LOCAL 421, affiliated with
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, My Type, Inc., provides package pick up and delivery services in Illinois and Iowa. The Petitioner, Teamsters Local 421, affiliated with International Brotherhood of Teamsters, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent a unit of all full-time and regular part-time drivers, loaders, leadworkers, relief drivers, dispatchers, and helpers employed by the Employer at its Dubuque, Iowa facility. A hearing officer of the Board held a hearing and the parties filed briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on one issue: whether the petitioned-for unit limited to the Dubuque facility is appropriate. Contrary to the Petitioner, the Employer contends that the only appropriate unit must include all four of its Iowa facilities. I have considered the evidence and arguments presented by the parties on the sole issue in dispute, and I find that the only appropriate unit must include, at least, the Employer's Cedar Rapids and Dubuque, Iowa facilities. As the Petitioner has declined to proceed to an election in any unit other than the petitioned-for unit, the petition must be dismissed. Therefore, I need not determine whether the smallest appropriate unit must also include the Employer's other two Iowa facilities.

I. OVERVIEW OF OPERATIONS

The Employer's headquarters are located in East Moline, Illinois. The Employer's president, air freight manager, and assistant air freight manager are stationed at the headquarters, along with other upper management officials. The Employer operates nine other facilities located throughout Illinois and Iowa. The Employer's Illinois facilities are not at issue here. The Employer's four Iowa facilities are located in Dubuque, Cedar Rapids, Mt. Pleasant, and Mason City. The Cedar Rapids facility is the most centrally located of the four facilities and serves as a hub for the transfer of freight to and from the Dubuque and Mt. Pleasant facilities. Mason City receives freight through Rochester, Minnesota. The facilities at issue primarily provide services for DHL pursuant to one-year contracts, which do not specify wages or other terms of employment for the Employer's employees. The Dubuque and Cedar Rapids facilities are covered by a single contract with DHL; Mason City and Mt. Pleasant are each covered by separate contracts.

One station manager, located at the Mt. Pleasant facility, dispatches for all four Iowa facilities. No supervisor or manager is stationed at the other Iowa facilities, but each facility has a lead driver.¹ Other than the lead driver, each facility has two types of drivers, line haul and route. A line haul driver picks up the packages destined for his facility from the hub in the morning or delivers packages from his facility to the hub in the evening. The route drivers pick up and deliver packages to customers. Both the Dubuque and Mt. Pleasant facilities each employ 11 drivers, while the Cedar Rapids and Mason City locations each employ 5 drivers. A relief dispatcher also works at Mt. Pleasant and two dock workers work at the Cedar Rapids

¹ The Petitioner does not specifically contend that the lead drivers are supervisors within the meaning of the Act and it appears that the parties intend to include the lead drivers in the unit because they stipulated that "leadworkers" are to be included; the lead drivers are apparently the only "lead" employees employed by the Employer, and the air freight manager testified, in essence, that she uses the terms interchangeably. However, in its brief, though not contending 2(11) status, the Union argues that lead drivers have the authority to "effectively recommend" hire and retention. The evidence however does not support this contention, at least within the meaning of Section 2(11).

facility. The dock workers load and unload the packages at the hub, which arrive by both plane and truck.

II. THE ISSUES TO CONSIDER IN A MULTI-FACILITY SETTING

A single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See *J & L Plate, Inc.*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the burden of rebutting its presumptive appropriateness. Although heavy, this burden does not require overwhelming evidence of a complete submersion, or obliteration, of the separate interests of the employees at the single facility. *Trane*, 339 NLRB No.106 (2003); *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983). To determine whether the single facility presumption has been rebutted, the Board examines a number of community of interest factors, including: (1) control over daily operations and labor relations, including the extent of local autonomy; (2) employee interchange and contact; (3) similarity of employee skills, functions and working conditions; (4) geographic proximity; and (5) bargaining history. *Trane*, supra; *Alamo Rent-a-Car*, 330 NLRB 897 (2000); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *R & D Trucking, Inc.*, 327 NLRB 531 (1999). Because there is no bargaining history at any of these locations, further analysis of that factor is unnecessary.² The analysis below discusses the remaining relevant factors.

III. DISCUSSION OF THE RELEVANT FACTORS

A. Control Over Daily Operations and Labor Relations

The record establishes central control over both the labor relations and daily operations for all Iowa facilities. The Employer's president establishes the terms, conditions and policies of employment for all facilities and must approve all expenditures. The air freight manager is

² The Employer contends that the parties' stipulation to an election in an all-Iowa unit in the spring of 2003 is a factor favoring a multi-facility unit. I agree with the Petitioner that this stipulation, entered into with three other local unions as joint petitioners, is irrelevant here. Even if viewed as an admission that a multi-facility unit is appropriate, it does not preclude a finding that a single facility unit is also appropriate.

responsible for administering the DHL contracts and serves as the primary point person and main facilitator of communication between DHL and the Employer's drivers. Most communications are routed through the station manager, although approximately once per week, the air freight manager communicates directly to all the Iowa drivers. The air freight manager occasionally travels to the Employer's Iowa facilities to assess audit readiness, conduct interviews of job applicants, and discuss changes in procedure and policy. She visits the Dubuque facility once or twice per month. The air freight manager determines the schedule for all of the facilities, maintains the master calendar and must approve all employee requests for time off. Either the president or the air freight manager must approve all transfers or changes in routes and make all decisions regarding discipline, including discharge. Although the station manager or a lead driver may conduct initial employment interviews, the president or air freight manager makes the hiring decision.

The Mt. Pleasant station manager is the dispatcher for the four Iowa locations. The station manager continuously monitors the drivers' deliveries via computer, checking, inter alia, the number and status of failed deliveries and that deliveries are made within the proper time windows and proofs of delivery procured. The station manager is in frequent daily contact with the route drivers via text messaging on their scanners, fax, radio or cellular phone; his contact with line haul drivers, though, is less frequent. The station manager advises drivers of special delivery instructions, delivery problems, and he gives map directions and other advice to the drivers. Drivers are instructed to contact the station manager if problems arise during the workday or if they are involved in an accident. The station manager has interviewed applicants and made hiring recommendations to the air freight manager, which are followed approximately 90 percent of the time. The station manager must also approve employee time cards before they are submitted to the payroll service and employee requests for time off are submitted to the station manager, who in turn consults with the air freight manager.

A lead driver is assigned to each Iowa location. The Employer's president and the air freight manager described the lead driver's function as primarily a floater, meaning that the lead driver has knowledge of the various routes and is able to cover those routes if necessary and can help train drivers. Other drivers also help train and cover routes. The lead drivers also serve as a conduit for the dissemination of rules and policies to other drivers. The lead driver in Mason City may conduct initial screening employment interviews; however the lead drivers in Dubuque and Cedar Rapids do not currently have that authority. The record does not reflect how the hiring process proceeds after this initial interview or what, if any, recommendation the Mason City lead driver makes in hiring. However, the final decision to hire is made by upper management. In case of absences, the lead drivers have substantial input in deciding how the route will be covered as they are the most familiar with the availability of other drivers and their experience with the route at issue. If the lead driver can cover the route himself or with another driver from his facility, the lead driver simply reports the absence and coverage to the station manager. The lead driver's choices are limited, though, as a driver cannot drive a route that he has not been trained on. If the absence cannot be covered locally, the lead driver will consult with the station manager. If a problem arises, such as driver misconduct, a vehicle accident, or otherwise, the lead drivers must report the problem to the station manager or his superior. Lead drivers have no authority to discipline.

The current lead driver for the Dubuque facility, Cory Jaeger, was a driver at Cedar Rapids and became the Dubuque lead driver on July 30, 2004, which was about a month prior to the hearing in this case. Jaeger was appointed lead driver when the previous Dubuque lead driver quit. Jaeger received no wage increase when appointed. Jaeger currently reports to work at the Cedar Rapids facility at around 5 a.m., works for a couple hours and then travels to Dubuque, where he works until about 4:30 p.m. For the past month, Jaeger has been driving a route that was transferred from the Cedar Rapids to the Dubuque service area; has been training a newly-hired Dubuque driver as well as the Cedar Rapids lead driver on that route; and

has been receiving training on an additional Dubuque-based route. The record is unclear what Jaeger's responsibilities and schedule will be after this training period is completed, although testimony indicates that after the training is completed, Jaeger will spend more time in Cedar Rapids but will continue to cover absences in Dubuque.

The previous Dubuque lead driver, Chad Oliver, worked in Dubuque. Dubuque drivers testified that Oliver advised employees of rules and policies, such as their "drop dead" (deadline) time and admonished them if they were late. He asked drivers if they would cover routes during absences, offered a driver a new route, asked a driver to train a newly hired driver on his route and questioned the driver on the progress of the training. Oliver also communicated with the drivers via scanner asking them what time they would return or if they could make additional pick ups. Oliver also reviewed paperwork turned in by the drivers, although the record does not reflect the purpose of the review. One driver testified that the day he submitted an employment application, he spoke with Oliver and interviewed with no other management representative before being told by Oliver two days later that he was hired. Thereafter, the driver was trained by Oliver. No other supervisor ever accompanied the driver on his route. However, another driver testified that he was never accompanied on a route by a supervisor or manager and that the only time Oliver accompanied him on a route was when he was training Oliver on his particular route. One driver testified that he would report problems to Oliver if the station manager was not available, which was usually in the early morning or afternoon. A driver also testified that Oliver was the only person who could have reported an inappropriate comment to upper management and that Oliver was present along with the president and the air freight manager during the issuance of a disciplinary warning to a driver for that comment. Oliver also filled in for absent drivers in both Dubuque and Cedar Rapids. One driver estimated that in the past year, Oliver drove routes for Cedar Rapids on 3 or 4 occasions. During the past month, the Cedar Rapids lead driver has traveled to Dubuque 8 or 9 times, to train on routes and cover absences.

B. Employee Interchange and Contact

Specific evidence of temporary interchange was limited to the month of August, 2004. During that month, the two lead drivers based in Cedar Rapids spent a substantial amount of time in Dubuque receiving training and performing training on routes and covering for absences, as described above. Witnesses also testified generally that prior to August, Dubuque lead driver Chad Oliver was occasionally called to cover routes in Cedar Rapids and that the Cedar Rapids lead driver and Cory Jaeger, then simply a route driver, occasionally covered routes in Dubuque. No evidence showed any interchange of employees between Dubuque or Cedar Rapids and Mt. Pleasant or Mason City. However, an employee request to transfer from Mt. Pleasant to Cedar Rapids due to family necessity was approved.

Other than the lead drivers training other drivers or covering absences, the Dubuque line haul drivers are the only employees who have regular contact with Cedar Rapids employees. A Dubuque line haul driver picks up packages from Cedar Rapids every morning and another driver delivers packages to Cedar Rapids every evening. Each driver spends approximately 45 minutes at the Cedar Rapids facility each day. In the past year, drivers from all Iowa locations were required to travel to Cedar Rapids for training on two occasions.

C. Similarity of Employee Skills, Functions, and Working Conditions

The route drivers at all Iowa facilities have the same skills, function, and drive the same type of van. The line haul drivers at all facilities have the same skills, function, and drive larger trucks than the route drivers, either a 12, 14, or 16 cubic foot truck. Only Cedar Rapids, due to its hub status, employs dock workers and does not employ line haul drivers. However, also due in part to its hub status, the work of the Cedar Rapids and Dubuque employees is highly integrated and interdependent. The drivers' work hours vary between facilities due to this integration and the distances between facilities. Before deliveries can be made in Dubuque, Mt. Pleasant, or Mason City, the drivers must await arrival of the line haul trucks. Similarly, the

“drop dead” times for return of pick ups from the facility must account for the travel time to the hub.

The employees at all of the Iowa facilities are covered by the same labor relations and personnel policies and employee handbook. The employees at the Dubuque and Cedar Rapids facility are also covered by the same DHL contract, which establishes service levels and other rules and regulations. All employees at the Dubuque and Cedar Rapids facilities, including the lead drivers, are hourly paid and receive the same benefits. The station manager at Mt. Pleasant and other managers are salaried. The employees’ hourly wages vary between facilities because some employees were grandfathered in at their pre-existing wage rate with the previous contractor of their delivery routes. Most employees earn between \$8 to \$10 per hour, with one employee earning in excess of \$11 per hour.

D. Geographic Proximity

The Employer’s Iowa facilities are separated by a considerable distance. As stated above, the Cedar Rapids facility is centrally located amongst the Employer’s Iowa operations. Cedar Rapids and Dubuque are separated by a drive of approximately 90 minutes. Mt. Pleasant is about an hour’s drive from Cedar Rapids, while Mason City is approximately 2 hours away.

IV. ANALYSIS

While the record contains little evidence concerning the employees at the Mt. Pleasant and Mason City facilities, the evidence concerning the Dubuque and Cedar Rapids facilities is sufficient to rebut the single-facility presumption and to establish that the petitioned-for unit limited to the Dubuque facility is inappropriate. Although the distance between the facilities and the lack of specific evidence of significant interchange favor the single-facility Dubuque unit, on balance, the centralized control, especially the lack of local autonomy; the integrated operations; and the identical employee skills, functions, and similar working conditions establish that the Dubuque facility has “lost its separate identity.” *J & L Plate, supra*.

Here, except for some variation in hourly wage rate and scheduled hours, the route drivers in Dubuque and Cedar Rapids possess identical skills, perform identical functions, and labor under identical working conditions. Although Dubuque employs line haul drivers while Cedar Rapids employs dock workers, their functions are highly integrated due to the Employer's utilization of a hub system and thus serve to further merge the interests of the employees.

Moreover, control over the daily operations and labor relations is highly centralized. Headquarters management controls all personnel policies and terms and conditions of employment, including hiring, firing, discipline, discharge, scheduling, transfers, time off, wages, and expenditures. The station manager at Mt. Pleasant closely oversees the daily work of all of the Iowa drivers, including those in Dubuque and Cedar Rapids.

The Dubuque facility lacks local supervision and autonomy. Although Petitioner does not specifically contend that the lead driver is a supervisor, Petitioner does contend that the duties and authority of the Dubuque lead driver establish substantial local control over daily operations and personnel decisions. Petitioner contends that Oliver exercised substantial control over daily operations by communicating with drivers through the scanner; asking drivers to cover routes and train new drivers; admonishing them to return by the "drop dead" time; by communicating Employer rules, policies, and directives to drivers; and by reviewing drivers' paperwork. No evidence was presented that Oliver exercised any judgment in these actions, rather than, as contended by the Employer, serving simply as a conduit for upper management. Similarly, Petitioner contends that the evidence establishes that Oliver had substantial input into personnel decisions because he was the only person to interview a new hire and observe the employee actually drive, and therefore Oliver must have "effectively recommended" this employee's hire and retention. Petitioner also contends that Oliver exercised substantial input into personnel decisions because he offered an employee a new route and was involved in the issuance of a warning. Again, the evidence does not establish that Oliver utilized any judgment or acted other than as a conduit. With respect to the interview, the informal interview took place

as the driver turned in his application. There is no evidence that Oliver made any recommendation, and the evidence does establish generally that the hiring decisions are made by upper management after review of motor vehicle records. Although Oliver may have been the only lead driver or manager to physically observe a new driver on his route, the evidence establishes that other new drivers were trained by regular route drivers and not physically observed on their routes by management. Thus, this evidence does not establish that Oliver had any input into the Employer's decision to retain new drivers. Moreover, Oliver's participation in the disciplinary process establishes only his reportorial role, rather than any role in the decision-making process. In light of the evidence of substantial centralization, the limited oversight exercised by Oliver is insufficient to establish significant local autonomy. See *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983). (Store manager's severely circumscribed autonomy and high degree of centralization of administration and control compels a finding that single store units are inappropriate). Even more important, though, is the fact that Oliver is no longer employed and the lead driver position has obviously changed at the Dubuque facility. Clearly, the Employer does not rely on the current lead driver to oversee the day-to-day Dubuque operations even to the limited extent Oliver did; the Mt. Pleasant station manager fulfills that function. Thus, the current situation establishes even less local control than exercised by Chad Oliver.

Although the record establishes daily contact between Dubuque and Cedar Rapids as well as functional integration, specific evidence of interchange is limited to the month of August, 2004. This evidence of daily interchange appears to be an anomaly because a route was transferred from Cedar Rapids to Dubuque and a new driver hired. The Employer's evidence of interchange prior to August is limited to general testimony that certain drivers from one facility have "occasionally" covered absences at the other. This evidence is deficient, both because of its lack of specificity and because "occasional" interchange is not the equivalent of significant interchange. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999). However the

testimony is unchallenged and does establish some degree of interchange. See *Trane*, 339 NLRB No. 106, slip op. at 3 (2003).

The substantial distance between facilities clearly favors the single-facility unit. However, even coupled with the lack of specific evidence of regular interchange, these factors do not outweigh the centralized control over daily operations and labor relations; lack of local autonomy; common supervision; identical skills and duties and similar terms and conditions of employment; contact and functional integration between facilities. *Trane*, supra; *Waste Management Northwest*, 331 NLRB 309 (2000); *Petrie Stores Corp.*, supra. Accordingly, I find that the presumptive appropriateness of the single facility unit has been rebutted and that the appropriate unit must include, at least, the Cedar Rapids and Dubuque facilities. As the Petitioner has declined to proceed to an election in any unit other than that petitioned for and as I have found that unit inappropriate, I will dismiss the petition.

V. CONCLUSION AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's findings made at the hearing are free from prejudicial error and are affirmed;
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case;³
3. The Petitioner claims to represent certain employees of the Employer; and
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated above.

³ The Employer, My Type, Inc., an Illinois corporation, is engaged in the business of package pick up and delivery out of its four facilities in Dubuque, Cedar Rapids, Mt. Pleasant, and Mason City, Iowa. During the past 12 months, which period is representative of the Employer's operations, the Employer purchased and received goods valued in excess of \$50,000 directly from sources located outside the State of Iowa. During the same period, the Employer had gross revenues in excess of \$1,000,000.

VI. ORDER

The petition filed in this matter is dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by September 24, 2004.

Dated: September 10, 2004
at: St. Louis, Missouri

/s/ Leo D. Dollard
Leo D. Dollard, Acting Regional Director
National Labor Relations Board, Region 14
and Subregion 33